

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

LIZZENIA FERNANDEZ,

Plaintiff,

v.

BIG LOTS STORES, INC., JOHN
DOE, JANE DOE, ABC Co., and XYZ
CO.,

Defendants.

Civil Action File No:

NOTICE OF REMOVAL

COMES NOW Big Lots Stores, Inc. (hereinafter, “Defendant”), Defendant in the above-styled civil action, and petitions for removal of the action herein from the State Court of Gwinnett County, State of Georgia, to the United States District Court for the Northern District of Georgia, Atlanta Division, and respectfully shows the Court the following:

1.

On June 6, 2019, Plaintiff Lizzenia Fernandez filed a civil action in the State Court of Gwinnett County, State of Georgia, styled *Lizzenia Fernandez v. Big Lots Stores, Inc.*, Civil Action File No. 19-C-03978-S6. (Attached as Exhibit “A” are copies of all process and pleadings received by counsel for Defendant in such

action. Defendant has also filed a *Notice of Filing Notice of Removal* in the Gwinnett County State Court. A copy is attached hereto as Exhibit “B”).

2.

Defendant was served with Plaintiff’s Complaint on June 11, 2019. This *Notice of Removal* is timely filed within the thirty (30) day period as required by 28 U.S.C. § 1446(b).

3.

Gwinnett County, Georgia, where this lawsuit was initiated, is within the Atlanta Division of the United States District Court for the Northern District of Georgia.

4.

This action is one over which this Court has diversity jurisdiction pursuant to 28 U.S.C. § 1332.

5.

Based on reasonable inquiry and belief, Plaintiff is a resident of DeKalb County, Georgia, and has submitted to the jurisdiction and venue of the State Court of Gwinnett County. Plaintiff is therefore a domiciliary of the State of Georgia.

6.

Defendant is a corporation organized under the laws of the State of Ohio, maintaining its principal office and principal place of doing business in Ohio. As such, for jurisdictional purposes Defendant is a foreign entity having citizenship in Ohio. *See* 28 U.S.C. § 1332(c)(1).

7.

Based on the foregoing, complete diversity of citizenship exists between all of the parties. *See* 28 U.S.C. § 1332(a)(1).

8.

The amount in controversy is sufficient under 28 U.S.C. § 1332(a). In order to meet the \$75,000 amount in controversy, “it is not the settlement value of a case that determines whether the jurisdictional amount is in controversy. The appropriate measure is the litigation value of the case assuming that the allegations of the complaint are true and assuming a jury returns a verdict for the plaintiff on all claims made in the complaint.” *Jackson v. Am. Bankers Ins. Co. of Fla.*, 976 F. Supp. 1450, 1454 (S.D. Ala. 1997) (citing *Burns v. Windsor Ins. Co.*, 31 F.3d 1092 (11th Cir. 1994)).

“It must appear to a **legal certainty** that the claim is really for less than the jurisdictional amount to justify dismissal.” *St. Paul Mercury Indem. Co. v. Red*

Cab Co., 303 U.S. 283, 289 (1938) (emphasis added); 14A Wright, Miller & Cooper, *Federal Practice and Procedure*, Sec. 3702 at 19. (Emphasis added); *Locklear v. State Farm Mut. Auto. Ins. Co.*, 742 F.Supp. 679 (S.D.Ga.1989).

9.

Plaintiff has alleged that, as a result of the incident giving rise to her Complaint, she suffered bodily injuries that have required Plaintiff to obtain medical attention, cause her to lose wages, and will require additional medical procedures. (Plaintiff's Complaint, ¶¶ 11-13).

10.

Plaintiff is seeking damages for her injuries including pain and suffering, all special damages, all future medical bills, and all other damages allowable by law. Assuming Plaintiff could prevail on each of the claims set forth in her Complaint, which Defendant denies, the matter in controversy has a value, exclusive of interest and costs, in excess of \$75,000.00. (*See* Affidavit of Barbara A. Marschalk, attached hereto as Exhibit "C").

11.

This action is one over which this Court has diversity jurisdiction pursuant to 28 U.S.C. § 1332, in that (a) Plaintiff and Defendant are citizens of different

states, and (b) the matter in controversy has a value, exclusive of interest and costs, in excess of \$75,000.00.

12.

WHEREFORE, Defendant prays that this petition be filed, that said action be removed to and proceed in this Court, and that there be no further proceedings in said case in the State Court of Gwinnett County.

The undersigned has read this Notice of Removal, and to the best of their knowledge, information, and belief, formed after reasonable inquiry, determined it is well-grounded in fact, is warranted by existing law, and is not interposed for any improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation.

Respectfully submitted, this 11th day of July, 2019.

DREW ECKL & FARNHAM, LLP

s/ Barbara A. Marschalk

Barbara A. Marschalk

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CERTIFICATE OF FONT COMPLIANCE

Counsel for Defendant hereby certifies that the forgoing has been prepared with one of the font and point selections approved by the Court in LR 5.1(B): Times New Roman (14 point).

DREW ECKL & FARNHAM, LLP

s/ Barbara A. Marschalk
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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I am counsel for Defendant and that I have this day served the foregoing *Notice of Removal* upon all parties to this matter by filing with the Court's CM/ECF system, which will automatically e-mail notification of same to the following counsel of record:

William T. "Billy" Joyner, Esq.
Haug Law Group, LLC
8237 Dunwoody Place
Atlanta, Georgia 30350

This 11th day of July, 2019.

s/ Barbara A. Marschalk

Barbara A. Marschalk

Georgia Bar No. 324498

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